

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WAUSAU UNDERWRITERS INSURANCE
COMPANY and AXIS SPECIALTY INSURANCE
COMPANY,

Plaintiffs,

-against-

QBE INSURANCE CORPORATION and
SCOTTSDALE INSURANCE COMPANY,

Defendants.

ANSWER

Docket No.:
06 CV 3212

Defendant Demands
Trial By Jury

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Defendant, SCOTTSDALE INSURANCE COMPANY, by its attorneys, KRAL,
CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, LLP, answering the complaint of plaintiff
herein, sets forth the following upon information and belief:

JURISDICTION AND VENUE

FIRST: Denies knowledge or information sufficient to form a belief as to the allegations
contained in paragraph "1" of the complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the
allegations contained in paragraph "2" of the complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations
contained in paragraph "3" of the complaint.

FOURTH: Denies knowledge or information sufficient to form a belief as to the
allegations contained in paragraph "4" of the complaint.

FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations
contained in paragraph "5" of the complaint.

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “6” of the complaint.

SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “7” of the complaint.

EIGHTH: Denies the allegations contained in paragraph “8” of the complaint except admits that SCOTTSDALE INSURANCE COMPANY is a foreign corporation authorized to do business in New York with offices located in Scottsdale, Arizona.

NINTH: Admits the allegations contained in paragraph “9” of the complaint.

TENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “10” of the complaint.

SUBSTANTIVE ALLEGATIONS

ELEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “11” of the complaint.

TWELFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “12” of the complaint.

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “13” of the complaint.

FOURTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “14” of the complaint.

FIFTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “15” of the complaint.

SIXTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “16” of the complaint.

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “17” of the complaint.

EIGHTEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “18” of the complaint.

NINETEENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “19” of the complaint.

TWENTIETH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “20” of the complaint.

TWENTY-FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “21” of the complaint.

TWENTY-SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “22” of the complaint.

TWENTY-THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “23” of the complaint.

TWENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “24” of the complaint.

TWENTY-FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “25” of the complaint.

TWENTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “26” of the complaint.

TWENTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “27” of the complaint.

TWENTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “28” of the complaint.

TWENTY-NINTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “29” of the complaint.

THIRTIETH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “30” of the complaint.

THIRTY-FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “31” of the complaint.

THIRTY-SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “32” of the complaint.

THIRTY-THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “33” of the complaint.

THIRTY-FOURTH: Denies the allegations contained in paragraph “34” of the complaint.

THIRTY-FIFTH: Denies the allegations contained in paragraph “35” of the complaint except admits the policy issued by Scottsdale to Arena is No. BCS0008003.

THIRTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “36” of the complaint.

THIRTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “37” of the complaint.

THIRTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “38” of the complaint.

THIRTY-NINTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “39” of the complaint.

FORTIETH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “40” of the complaint.

FORTY-FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “41” of the complaint.

FORTY-SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “42” of the complaint.

FORTY-THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “43” of the complaint.

FORTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “44” of the complaint.

FORTY-FIFTH: Denies the allegations contained in paragraph “45” of the complaint and refers all questions of law to the Court.

FORTY-SIXTH: Denies the allegations contained in paragraph “46” of the complaint and refers all questions of law to the Court.

FORTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “47” of the complaint.

FORTY-EIGHTH: Denies the allegations contained in paragraph “48” of the complaint and refers all questions of law to the Court.

FORTY-NINTH: Denies the allegations contained in paragraph “49” of the complaint.

AS AND FOR AN ANSWER FOR A FIRST CLAIM OF RELIEF
AGAINST QBE-FOR DECLARATORY JUDGMENT

FIFTIETH: Answering paragraph designated “50” of the complaint, this answering defendant reiterates, repeats and realleges each and every admission and denial heretofore made to

the allegations contained in paragraphs designated “1” through “49” of the complaint with the same force and effect as if here repeated and again set forth at length.

FIFTY-FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “51” of the complaint.

FIFTY-SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “52” of the complaint.

FIFTY-THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “53” of the complaint.

FIFTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “54” of the complaint.

FIFTY-FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “55” of the complaint.

FIFTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “56” of the complaint.

**AS AND FOR AN ANSWER FOR A SECOND CLAIM OF RELIEF
AGAINST SCOTTSDALE-FOR DECLARATORY JUDGMENT**

FIFTY-SEVENTH: Answering paragraph designated “57” of the complaint, this answering defendant reiterates, repeats and realleges each and every admission and denial heretofore made to the allegations contained in paragraphs designated “1” through “56” of the complaint with the same force and effect as if here repeated and again set forth at length.

FIFTY-EIGHTH: Denies the allegations contained in paragraph “58” of the complaint except admits that Scottsdale has refused to defend and indemnify Skanska and the NYC EDC for the claims alleged in the Underlying Action.

FIFTY-NINTH: Denies the allegations contained in paragraph “59” of the complaint.

SIXTIETH: Denies the allegations contained in paragraph “60” of the complaint.

SIXTY-FIRST: Denies the allegations contained in paragraph “61” of the complaint.

SIXTY-SECOND: Denies the allegations contained in paragraph “62” of the complaint.

SIXTY-THIRD: Denies the allegations contained in paragraph “63” of the complaint.

AS AND FOR A THIRD CLAIM FOR RELIEF
AGAINST QBE-FOR RECOVER OF CO-INSURANCE

SIXTY-FORTH: Answering paragraph designated “64” of the complaint, this answering defendant reiterates, repeats and realleges each and every admission and denial heretofore made to the allegations contained in paragraphs designated “1” through “63” of the complaint with the same force and effect as if here repeated and again set forth at length.

SIXTY-FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “65” of the complaint.

SIXTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “66” of the complaint.

SIXTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “67” of the complaint.

SIXTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “68” of the complaint.

SIXTY-NINTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “69” of the complaint.

AS AND FOR A FOURTH CLAIM FOR RELIEF
AGAINST SCOTTSDALE-FOR RECOVER OF CO-INSURANCE

SEVENTIETH: Answering paragraph designated “70” of the complaint, this answering defendant reiterates, repeats and realleges each and every admission and denial heretofore made to the allegations contained in paragraphs designated “1” through “69” of the complaint with the same force and effect as if here repeated and again set forth at length.

SEVENTY-FIRST: Denies the allegations contained in paragraph “71” of the complaint.

SEVENTY-SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “72” of the complaint

SEVENTY-THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “73” of the complaint.

SEVENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “74” of the complaint.

SEVENTY-FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “75” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

SEVENTY-SIXTH: To the extent that the plaintiffs issued their own policies of insurance, damages herein are limited by the rationale set forth in Inchautegui v. 666 Fifth Avenue, 96 N.Y.2d 111, 725 N.Y.S.2d 627 (2001)

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

SEVENTY-SEVENTH: That the allegations of the underlying complaint do not trigger “additional insured” coverage under the SCOTTSDALE INSURANCE COMPANY policy.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

SEVENTY-EIGHTH: The complaint fails to state a cause of action against this answering defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

SEVENTY-NINTH: There is no coverage under any policy of insurance issued by SCOTTSDALE INSURANCE COMPANY to the extent that the notice requirements of that policy have not been fully complied with.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

EIGHTIETH: There is no coverage under any policy of insurance issued by SCOTTSDALE INSURANCE COMPANY to the extent that there was a failure to take reasonable measures to mitigate damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

EIGHTY-FIRST: There is no coverage under any policy of insurance issued by SCOTTSDALE INSURANCE COMPANY for monetary obligations assumed or voluntarily paid.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

EIGHTY-SECOND: Plaintiff has failed to join necessary and indispensable parties to this action.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

EIGHTY-THIRD: Some or all of the claims against any policy of insurance issued by SCOTTSDALE INSURANCE COMPANY may be barred in whole or in part by reason of the existence of other insurance.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

EIGHTY-FOURTH: The underlying claims are subject to the per occurrence and aggregate policy limits of the SCOTTSDALE INSURANCE COMPANY policy.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

EIGHTY-FIFTH: There is no obligation under the SCOTTSDALE INSURANCE COMPANY insurance policy to pay for defense costs incurred prior to the notification of the suit to SCOTTSDALE INSURANCE COMPANY.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

EIGHTY-SIXTH: The policyholder has improperly exhausted the underlying coverage.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

EIGHTY-SEVENTH: There can be no claim for coverage under the SCOTTSDALE INSURANCE COMPANY insurance policy for losses covered by other general liability insurance policies until there has been an exhaustion of the limits of any such “other insurance”.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

EIGHTY-EIGHTH: Plaintiffs have no standing to commence the within lawsuit.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

EIGHTY-NINTH: Under potentially relevant provisions of the SCOTTSDALE INSURANCE COMPANY policy or any other relevant policy issued by SCOTTSALE INSURANCE COMPANY, or any related or affiliated entity, plaintiff cannot be an additional insured, and is not otherwise entitled to coverage, to the extent that: any relevant named insured was not required by written contract to name plaintiff as an additional insured.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

NINETIETH: SCOTTSdale INSURANCE COMPANY reserves the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information regarding the subject claims, and upon further investigation into the provisions, terms and conditions of the applicable insurance policies. These additional defenses cannot be specifically articulated at this time due to the plaintiff's failure to particularize its claim.

**AS AND FOR A FIRST-CROSS CLAIM AS AGAINST
QBE INSURANCE COMPANY**

NINETY-FIRST: That if the plaintiff(s) were caused to sustain damages as set forth in the verified complaint due to any negligence or other liability other than their own, then said damages were sustained by reason of the negligence, breach of contract and/or warranty or other liability and culpable conduct of the co-defendant, its agents, servants and/or employees as alleged in the verified complaint, and if any judgment is recovered herein by the plaintiff(s) against SCOTTSdale INSURANCE COMPANY it will then be damaged by the defendant QBE INSURANCE CORPORATION, which will be responsible therefore in whole or in part.

NINETY-SECOND: By reason of the foregoing, the defendant QBE INSURANCE CORPORATION will be liable to the answering defendants herein, in common law contribution, common law indemnification and contractual indemnification, in the event and in full amount of any recovery had herein by the plaintiff(s) or for that proportion thereof caused by the relative responsibility of said co-defendant(s) which will then be bound to pay any and all fees and disbursements.

WHEREFORE, the defendant SCOTTSale Insurance Company demands judgment dismissing plaintiff's verified complaint on the merits as to this answering defendant or, in the alternative, that the ultimate rights of the defendants be determined in this action and that the defendant SCOTTSale Insurance Company have judgment over and against the defendant QBE Insurance Corporation, for all or for that portion of any judgment that may be recovered herein by the plaintiff(s) as against the answering defendant herein or for total common law indemnification and contractual indemnification against the defendant QBE Insurance Corporation, together with the costs and disbursements of this action.

Dated: Mineola, New York
June 1, 2006

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN
PERRY & GIRVAN, LLP
Attorneys for Defendant
SCOTTSDALE Insurance Company
69 East Jericho Turnpike
Mineola, New York 11501

By: _____
LEONARD PORCELLI, ESQ.

TO: JAFFE & ASHER, LLP
Attorneys for Plaintiffs
WAUSAU UNDERWRITERS INS.
CO. and AXIS SPECIALTY INS. CO.
600 Third Avenue, 9th Floor
New York, New York 10016
(212) 687-3000

QBE Insurance Corporation
Wall Street Plaza
88 Pine Street, 16th Floor
New York, New York 10005

